the Law Society. It is I think a matter for regret that this matter had to go so far as to reach this court for that decision to be made.

Next, on the question of jurisdiction, Mr Kathigesu has I think very properly put forward a legal argument to say that in theory there could be jurisdiction assumed by the Council in relation to proceedings under Part VII of the Act in respect of an advocate and solicitor who is not in possession of a practising certificate. In other words, any advocate and solicitor who has been duly admitted and is on the rolls could be disciplined or proceedings could be brought against him in the first instance either by or before the Law Society and through the Law Society the Inquiry Committee.

However, for the purposes of this case, Mr Karthigesu for the Law Society has properly conceded, having regard to s 28(2), the declaratory provision in the Act, that Mr Ang specifically has a right of audience in the courts and when he is acting in his capacity as deputy public prosecutor cannot come within s 80, the present s 82(1), in respect of his conduct in his professional capacity.

It is clear to me that the complaint of Mr Dube, call it complaint, call it by any other word, relates to the conduct of Mr Ang in his capacity as deputy public prosecutor, in his professional capacity, that it is alleged by Mr Dube that it is in that capacity he had used certain words which Mr Dube had considered unwarranted, baseless and dishonourable. Clearly that would not come within the jurisdiction of the Law Society or of the Council or of the Inquiry Committee to look into.

So on the first ground on which complaint is taken in this case I agree altogether with the submissions made by the Attorney General, that the Law Society and the Council and the Inquiry Committee had wrongly assumed jurisdiction. In my opinion they did not have the power to do so.

So I will make an order under s 92(3) setting aside the order of the penalty imposed on Mr Lawrence Ang.

The learned Attorney General has also asked for costs of these proceedings and the costs of his appearance for Mr Lawrence Ang before the Council.

I think costs must follow the event. These proceedings should not have been necessary. The Law Society will pay the costs of these proceedings, including the costs of the Attorney General before the Council when Mr Lawrence Ang was called upon to appear before the Council.'

I hereby certify the above grounds of judgment.

Application allowed.

Solicitors: *Tan Rajah & Cheah.*

Reported by *Azra Moiz*

Lim Seow Wah & Anor v Housing & Development Board & Anor

HIGH COURT (SINGAPORE) — SUIT NO 9099 OF 1984
CHAN SEK KEONG J
27 DECEMBER 1990

Tort — Negligence — Occupiers' liability to trespassers — Whether occupier had taken sufficient measures to deter trespassers — Whether occupiers owe duty of care to trespassers

Damages (Personal Injury or Death) — Fatal accident — Loss of earnings for lost years — Deceased aged 18 years — Civil Law Act (Cap 30, 1985 Ed), ss 8 & 12

The deceased, aged 18 years, was injured and died from a head injury as a result of being struck by a falling object. The accident occurred at a construction site which was owned by the first defendants and occupied by the second defendants, who as building contractors were building a block of flats for the first defendants. The plaintiffs, as administrators of the estate of the deceased, claimed damages for negligence against the defendants. At the hearing, the claim against the first defendants was discontinued by consent. The second defendants submitted that they owed no duty of care to the deceased as he was a trespasser who had also been warned by signboards of the dangers of entering the site. Even if there were no signboards, the deceased, by reason of his age, ought to have known of the dangers and therefore the duty of care owed to him was an attenuated duty. The plaintiffs argued that 'the duty owed to trespasses arises when the occupier knows of facts which show a substantial chance that they may come to a place where there is a danger which he has created or knows about, and that the duty is discharged by the occupier taking such steps to avoid it in accordance with the dictates of common humanity and in the light of his own circumstances and financial limitations.'

Held, allowing the plaintiffs' claim:

(1) The evidence adduced by the plaintiffs shows that at the material time members of the public had full and unrestricted access to the site to patronize the coffee stall which was run by a licensee of the defendants. As such the deceased and his companion were not trespassers; they were licensees in the sense that they were free to patronize the coffee stall. In any case, even if they were trespassers, the defendants ought to have foreseen such trespassers coming to the coffee stall to patronize it, applying the principle that 'the occupier ought in principle to be liable to a trespasser who is injured by the occupier's breach of duty towards his visitors, if there are any; but, as a substantive rule of law — a qualification upon *Herrington*'s case — an occupier ought not to be so liable to an adult who trespasses knowingly and without any reasonable excuse for doing so.' In the present case, the deceased did not know of the danger and he had a reasonable excuse to come onto the site.

(2) On the evidence, the second defendants owed a duty of care to all those who came to the site to patronize the coffee stall, and they accordingly owed a duty of care to the deceased, and that they breached their duty of care in not putting up a safety net where and when their employees were hacking the walls of the building. The works created a danger and the deceased was a foreseeable victim. Thus the second defendants are liable for damages. There was no question of contributory negligence on the part of the deceased.

(3) As to the claim for lost years, it is impossible to assess the prospective earnings of the deceased as his job was precarious. At the time of his death his earnings were estimated at $8,027 pa. Thus his earnings were assessed at $8,500 pa. As for the available surplus, it would be in the region of 40%, having regard to the fact that he was giving his mother $300 per month. The multiplier is agreed at 15. On this basis, the damages for lost years would be $8,500 × 15 × 40% = $51,000.

Cases referred to

1 *British Railways Board* v *Herrington* [1972] AC 877 (folld)
2 *Lembaga Letrik Negara* v *Ramakrishnan* [1982] 2 MLJ 182 (refd)
3 *Southern Portland Cement Ltd* v *Cooper* [1974] AC 623 (refd)

Legislation referred to

Civil Law Act (Cap 30, 1985 Ed) ss 8, 12

Narayanan Vijay Kumar for the plaintiffs.
Lawrence Chua for the defendants.

Cur Adv Vult

Chan Sek Keong J: This is an action for damages made under ss 8 and 12 of the Civil Law Act (Cap 30, 1985 Ed) in relation to the death of one Lim Kim Tong ('LKT') following an accident on 19 December 1981 at a construction site which was, at the material time, occupied by the second defendants. The claim against the first defendants (who were the owners of the site) was, by consent, discontinued at the conclusion of the hearing of this action.

The second defendants were building contractors who were constructing a 25-storey block of flats ('the building') for the first defendants. The site of the building was bounded on one side by a large canal, viz the Alexandra Canal and on the opposite side by Ganges Road, and on one side by a school, viz the Delta West School, which was fenced off from the site, although there was a gate leading into the site, and on the opposite site by another road, viz Delta Road.

On the date of the accident, the second defendants had already completed the entire structure of the building and were in the course of hacking the uneven walls in preparation for plastering them. During the construction of the building a safety net had been strung across the walls to catch any falling stones and debris. A gondola was used to hack the 25 floors of the building. It was hanging beside the wall on the 14th level at the time of the accident. Also, during construction, the public was prevented from having access to the works by a wooden fence or hoarding. Both the safety net and the fence was also taken down after the completion of the structure.

There was located on the ground floor of the building at the material time a coffee stall. This stall was operated by a licensee of the second defendants from the beginning of the construction works to cater to the needs of the workers. There is a conflict of evidence as to whether members of the public were disallowed from buying drinks and food from this stall. The plaintiffs have produced three witnesses who testified that members of the public had full access to the stall and frequented the stall as it was the only coffee stall within the surrounding area. The second defendants' witness, the supervisor, said that the stallholder was allowed to sell drinks and/or food to the workers and no one else. Having heard the witnesses, I believe the evidence of PW1 and PW2 and find that there was no restriction whatever against the stallholder selling drinks and food to any person who patronized it. The coffee stall was accessible to members of the public. There was no conceivable reason for them to do so since the second defendants claimed that they had put up adequate fencing/hoarding to prevent members of the public from going into the construction site. In any case, the important point was whether at the material time, the site and the coffee stall were accessible to the public. In my view, the evidence clearly establishes that both were accessible to the public.

The question is whether the second defendants were negligent as regards LKT, who was a member of the public. LKT was then living at Block 79, Indus Road which was situated next to the building site. He was then 18 years old. His friend, Lim Hang Huat (PW2), testified that on the afternoon of 19 December 1981 at about 1pm, he and LKT went to a nearby kampong to catch spiders. It began to rain about half an hour later. They wanted to look for shelter in the building as well as have a cup of coffee. They ran to the building, went under it on the ground floor on one side of it and continued to run towards the coffee stall. To reach the coffee stall by the most direct route, they have to cross an open space between two sections of the building. As they were crossing this space, LKT who was running ahead, was struck by something falling from above. PW2 heard the sound of a stone or a lump of cement. LKT fell on the ground. Something also fell on PW2's thigh but he was not injured. LKT began to bleed and appeared unconscious. PW2 dragged him into the covered section of the building. The Indian stallholder and some workers came to look. PW2 ran to inform PW1, the father of LKT.

PW1 testified that upon being informed of the accident, he ran to the site. He found LKT lying on the ground and bleeding. It was raining heavily. He carried his son to the side. LKT was conscious and 'struggling' and shouting that someone threw a stone at him. Later the ambulance arrived and took him to hospital. He fell into a coma in hospital and died on 25 December 1981.

The post-mortem report on LKT disclosed that he died from a fracture of the skull. His skull had 'a large burr hole at right parietal bone 8 × 7 cm. There was a

fracture of the right temporal bone 8cm with extradural haemorrhage.' The coroner found and I agree with him that the injury was caused by a hard object falling on the head of LKT.

I also find as a fact from the evidence adduced by the defence witness that the hard object was probably a stone or a lump of hardened cement which had fallen from the side of a wall or the gondola which was hanging in the air next to the wall. The profile of a 'burr hole' in the skull would suggest, most likely, a piece of hardened cement. Whatever it was, it either came off the wall or fell from the gondola. I have already mentioned that at this time the defendants were hacking the uneven walls of the building, and it may therefore be inferred that the falling object was a lump of uneven hardened cement.

The next issue of fact on which I make a finding is that on the evidence adduced before me there was insufficient reason for the second defendants' workers to remove the safety net in order to do the hacking work. DW2, the site foreman, testified that the net was removed because it impeded access to the gondola. I cannot agree. He was unable to explain why the net could not have been strung up in a way which allowed access to and from the gondola. In fact, he said that the safety net was taken off because it was their practice to do so. If the netting had not been taken off, this particular tragedy would not have happened. I think that the workers failed to appreciate the hacking work would pose a risk of injury to members of the public by falling lumps of cement.

It was also a fact in issue whether the defendants had placed warning signboards on the building to warn the public to keep out of the site. The plaintiffs called two witnesses to testify on this issue. One of them (PW4), the brother-in-law of the deceased, who was also living in Block 79, testified that he went to the scene of the accident at about 2pm to take a look. He saw a pool of blood at the spot where LKT had fallen. He did not see the signboard (as shown in P9 which photograph was taken sometime after the accident. Since it was taken by the police in daylight, it could only have been taken on the following day at the earliest). After that he went home, and shortly after that he saw a red car stopping near the place of the accident and three or four men taking out signboards from the boot of the car. The men then nailed the signboards to the building. He, of course, would not see P9 being marked to the building. He also said that he informed his wife, who was LKT's sister, and also other members of LKT's family what he had seen the following day.

The second witness was PW3, a reporter with the *Sin Chew Jit Poh*. He testified that he received a telephone call from PW1 on the day of the accident. He and his photographer went to LKT's house but were told that PW1 was at the hospital. They went to the hospital and met PW1 who told them about the condition of LKT and the nailing of the signboards after the accident. On the following day, he went to the site with PW1 who repeated his allegation concerning the signboards. PW3 and his photographer took a look at P9. He observed that the nails were new and not rusty. He and the photographer agreed with PW1's allegation about the signboards having been put up very recently. They then wrote a report about the accident which was published in the newspaper the following day.

The defendants called three witnesses to testify on this issue. The first, DW1, was a sergeant then attached to the Tanglin Police Station. He was informed about the accident at about 5.05pm but he did not visit the scene until about 7-7.30pm when it was already dark. [In his evidence at the coroner's inquiry, he said he arrived at the scene at about 7.40pm]. He said he saw P9 and another signboard. However, this other signboard was not shown in any of the photographs tendered in court. In my view, DW1's evidence was wholly inadequate and was insufficient to prove that P9 had been there before the accident.

The second witness for the defence was DW2. His evidence was that there were signboards on all sides of the building prior to the accident. He said that they were put up after the completion of the ground level of the building, and that the signboards were in three languages.

The third witness, DW4, was a former safety officer employed by the HDB whose job was to inspect all the sites where the HDB had buildings under construction. He was in charge of more than 100 sites. He said he saw warning signboards on the building when he visited the site about two months before the accident. However, he could not mark them correctly at the locations he said he had seen them. In my view, the evidence of DW4 was also of no assistance to the defendants.

The only independent witness in relation to P9 was PW3. He was a reporter who had been informed of the accident and he went there to investigate. I accept his evidence that when he look at P9 he found that the nails were new and not rusty. Since DW2's evidence was that P9 had been there since the completion of the first storey, it was impossible for the nails not to have been rusty. Accordingly, I find that P9 was put up immediately after the accident before the arrival of PW3.

To summarize my findings of fact: at the material time, (a) the building was not fenced off; (b) it was accessible to the public; (c) the coffee stall next to it was also accessible to the public, members of which patronized it; (d) hacking work was going on; (e) there was no safety net to prevent falling debris from injuring any

person who happened to be at that spot; (f) a gondola was left hanging in the air between the walls; and (g) there was no signboard warning people not to go to the site or walk through the building. The question is whether the defendants were negligent in these circumstances.

The submission of counsel for the defendants was that the defendants owed no duty of care to LKT as he was a trespasser who had also been warned by signboards of the dangers of entering the site. He also submitted that even if there were no signboard, LKT, by reason of his age, ought to have known of the dangers and therefore the duty of care owed to him was an attenuated duty. Counsel relied on the House of Lords decision in *British Railways Board* v *Herrington*[1] as laying down the principle that an occupier only owed a 'duty of ordinary humanity', which was 'at once more demanding than a duty merely to avoid reckless or intentional injury [which was the law before *Herrington*'s case[1]], but less demanding than a duty to take reasonable care.': *Clerk and Lindsell on Torts* (15th Ed) at para 12-52 [635].

Counsel for the plaintiffs relied on the decision of the Federal Court in *Lembaga Letrik Negara* v *Ramakrishnan*[2] where it was decided, following *Herrington*'s case[1] and *Southern Portland Cement Ltd* v *Cooper*[3] that 'the duty owed to trespassers arises when the occupier knows of facts which show a substantial chance that they may come to a place where there is danger which he has created or knows about, and that the duty is discharged by the occupier taking such steps to avoid it in accordance with the dictates of common humanity and in the light of his own circumstances and financial limitations'.

In my view, the evidence adduced by the plaintiffs shows that at the material time members of the public had full and unrestricted access to the site to patronize the coffee stall, which was run by a licensee of the defendants. There was no evidence whatever, apart from a mere assertion, that the stallholder was not allowed to sell food and/or drinks to people other than the workers. There was then no fence around the site, and people were allowed to come and go. On this evidence, I do not think that LKT and PW2 were trespassers. They sought shelter at the site when it was raining and they did so because they also wanted to have a drink. Since Block 79, which was where he lived, was just behind the building, LKT could have run home or sought shelter in some other buildings nearby. There was evidence that there was no other coffee-stall in the vicinity. I find that LKT and PW2 were licensees in the sense that they were free to patronize the coffee stall. In any case, even if they were trespassers, the defendants ought to have foreseen such trespassers coming to the coffee stall to patronize it: see *Clerk and Lindsell* at para 12-55 [640] where the principle is stated, which I accept, that: '[T]he occupier ought in principle to be liable to a trespasser who is injured by the occupier's breach of duty towards his lawful visitors, if there are any; but, as a substantive rule of law — a qualification upon *Herrington*'s case[1] — an occupier ought not to be so liable to an adult who trespasses knowingly and without any reasonable excuse for doing so.' In the present case, LKT did not know of the danger and he had a reasonable excuse to come into the site.

Stones and debris falling from the high floors of building sites are common occurrences. This is particularly so when the work involved is hacking of the walls. Bits of the hacked wall are likely to fall onto the gondola or down to the ground. I think that the works created a danger and there ought to have been a safety net at the second level to catch falling debris. There was such a safety net but, it was reasoned by the second defendants' workers for the wrong reason. I think that they followed past practice and could not be bothered to exert the extra effort to put up the safety net in a manner which did not impede the operation of the gondola. The defendants, for no good reason, removed the safety net, and his reason for doing so was that it was their practice to do so.

On the evidence before me, I find that the second defendants owed a duty of care to all those who came to the site to patronize the coffee stall, that they accordingly owed a duty of care to LKT, that they breached their duty of care in not putting up a safety net where and when their employees were hacking the walls of the building. The works created a danger and LKT was a foreseeable victim. Accordingly, I find for the plaintiffs on the question of liability. There was no question of contributory negligence on the part of LKT.

I now assess damages. LKT's employer, PW6, at the material time testified that LKT was assisting him at his hawker stall selling turtle soup. LKT was paid $15 per day with $4 allowance for meals. As PW6 was also a wholesaler of turtles which were imported from Indonesia, he would also send LKT to the airport twice a week to take delivery, for which LKT was paid $20 per trip. LKT worked six days a week. On this basis, LKT's annual earnings would be $19 per day × (365-52) = $5,947 + $2,080 ($40×52) = $8,027 per year. PW6 did not say that LKT was paid any CPF. PW6 also said that some of his assistants had opened their own stalls selling turtle soup and that he himself was earning net about $3,000 to $5,000 per month selling turtle soup.

The defendants called an investigator, DW3, to investigate the earnings of LKT. He said that he visited PW6's stall twice, but managed to meet a man who said that he was the boss of LKT and that LKT was being paid $8 per day. I am not able to admit this evidence as PW6 was not cross-examined on this point nor was

DW3 asked to testify PW6. Without identification, this evidence was hearsay.

The plaintiffs also called LKT's mother as a witness and she testified that LKT was giving her about $300 per month.

Special damages have been agreed at $3,457. I award $7,000 for loss of expectation of life and $1,500 for pain and suffering during the short period LKT was conscious.

This is a claim for lost years. I find it impossible to assess the prospective earnings of LKT. He was 18 years old when he died. He left school at primary 5. He was then a hawker assistant, earning very good wages, compared with his two previous jobs. But his job was precarious. Counsel for the plaintiffs has suggested that I should assess his maximum earning during his lifetime, had he lived, at $4,000 since PW6 was earning $3,000 to $4,000 per month on the basis that he might have become a turtle soup seller and earning that amount. I find no basis for making an assumption that LKT might have become a turtle soup seller or that he might have earned between $3,000-$4,000 net per month. He might have gone through life as a hawker assistant or as an unskilled worker. Accordingly, I will assess his earnings as at about $8,500 pa. As for the available surplus, I would find that it would be in the region of 40%, having regard to the fact that he was giving his mother $330 per month. The multiplier is agreed at 15.

On this basis, the damages for lost years would be $8,500 × 15 × 40% = $51,000. The total damages are $51,000 + $3,457 + $7,000 + $1,500 = $61,415. There will be judgment for the plaintiffs in the sum of $61,415, with interest at the rate of 6% pa from the date of the writ to the date of judgment and costs to be taxed.

Order accordingly.

Solicitors: *Vijay Perumal & Jeremiah; Lawrence Chua & Partners.*

Reported by *Azra Moiz*

Lee Tat Property Management Pte Ltd v Management Corporation Strata Title No 360

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 31 OF 1986
SINNATHURAY J
7 DECEMBER 1990

Land Law — Strata title development — Quorum for holding of annual general meeting — Validity of resolution passed to increase monthly contribution to management fund

Statutory Interpretation — 'Quorum' — Land Titles (Strata) Act (Cap 158, 1985 Ed), First Schedule para 12(1)

Civil Procedure — Costs — Management corporation — Action to recover contributions due to management fund — Whether management corporation entitled to costs on solicitor and client basis

The respondents are the management corporation of Strata Title No 360 of UIC Building. UIC Development (Pte) Ltd ('UICD') owns 51 lots out of a total of 81 lots in this strata title. The appellants are the subsidiary proprietors of four lots in UIC Building. An annual general meeting of the management corporation was convened whereby eight out of 18 individual subsidiary proprietors, one of whom was a representative of UICD, were present. A resolution was passed to increase the monthly contribution to the management fund. Subsequently, an extraordinary general meeting was convened and a resolution was passed to ratify the resolution passed at the earlier general meeting. The respondents claimed in the subordinate courts for the sum of $2,948.81 being the balance sum of the contributions due and payable by the appellants for their four lots in UIC Building. The appellants contended, at the hearing in the district court, that the general meeting had not been duly convened as there was no quorum. Consequently, the resolution passed at that meeting was a nullity. Therefore, there was no resolution to ratify at the subsequent extraordinary general meeting. The learned district judge came to the decision that there had indeed been a quorum. In the appeal, the main issue for determination concerns the interpretation of the word 'quorum' in the statutory provisions of the Land Titles (Strata) Act (Cap 158, 1985 Ed) ('the Act').

Held, dismissing the appellants' appeal and allowing the respondents' cross-appeal:

(1) When the Act refers to 'persons entitled to vote ... at a general meeting', the reference is to individual owners of subsidiary properties in a subdivided building. This is plain because each strata lot is owned by a person, which includes any company. What counts at a general meeting is the ownership of a strata lot and not the collective ownership of a number of lots. In the present case, UICD owns 51 lots. When a representative of UICD attends a general meeting, he is entitled to vote at the meeting as owner of 51 lots, because he represents 51 subsidiary properties. He has 51 votes.

(2) The determining factor is not the number of different subsidiary proprietors present at a meeting but the number of strata lots owned by the persons attending the meeting as subsidiary proprietors.

(3) Section 37(8) of the Land Titles (Strata) Act envisages the situation where a management corporation would be compelled by the refusal of a subsidiary proprietor to pay contributions to the management fund to instruct solicitors to take legal action to recover such contributions. If costs are